

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2009-168-E - ORDER NO. 2009-770
NOVEMBER 4, 2009

IN RE: Progress Energy Carolinas, Incorporated's) ORDER APPROVING
Motion for Partial Waiver of Commission) PARTIAL WAIVER OF
Rules 103-331 and 103-336) COMMISSION RULES
) 103-331 AND 103-336

This matter comes before the Public Service Commission of South Carolina (“Commission”) on the Motion of Progress Energy Carolinas, Inc. (“PEC”) for a partial waiver of Commission Rules 103-331 and 103-336.

This matter was initiated on April 16, 2009, when PEC filed a Motion for a Partial Waiver of those portions of Commission Rule 103-331 that pertain to deposit requirements for new and existing non-residential customers and those portions of Rule 103-336 that concern deposit retention. The Commission established Docket No. 2009-168-E to address PEC’s Motion.

On April 21, 2009, the Office of Regulatory Staff (“ORS”) gave notice of appearance in this proceeding. On May 26, 2009, the ORS filed a review letter stating that it had reviewed PEC’s Motion and had no objection to the relief requested.

By Order No. 2009-344, this Commission directed Staff to schedule a generic hearing concerning PEC’s motion for partial waiver of Commission Rules 103-331 and 103-336. The Commission observed that both Duke Energy Carolinas (“Duke”) and South

Carolina Electric & Gas Company (“SCE&G”) had previously requested similar waivers of these rules and that uniformity in the application of the Commission’s rules necessitated a generic proceeding. By notices issued June 5, 2009, the Commission established testimony filing dates for all parties and scheduled a hearing on this matter for September 17, 2009.

The ORS, PEC, Duke, Lockhart Power Company and SCE&G are all of the parties of record in this matter. On August 20, 2009, direct pre-filed testimony was submitted for: PEC by Elaine McCallister; Duke by Barbara Yarbrough; SCE&G by Dan Brown; and the ORS by Randy Watts. On September 10, 2009, PEC, Duke, SCE&G and the ORS filed a Stipulation supporting PEC’s Motion for Partial Waiver.

The Commission conducted a formal hearing in this matter on September 17, 2009, beginning at 10:30 a.m. in the hearing room of the Commission, with The Honorable Elizabeth Fleming, presiding. Len S. Anthony, Esquire, represented PEC. Shealy Reibold, Esquire, and Shannon Hudson, Esquire, represented ORS. Chad Burgess, Esquire, represented SCE&G. Catherine Heigel, Esquire, represented Duke. Margaret M. Fox, Esquire, represented Lockhart Power Company.

At the opening of the hearing, Ms. Reibold, counsel for ORS, advised the Commission of the Stipulation, and moved the Stipulation and all pre-filed testimony and exhibits into the Record. The Stipulation was established as Hearing Exhibit 1. The Commission accepted the Stipulation and all pre-filed testimony and exhibits into the Record.

The Stipulation set forth the Parties' agreement that:

1. The partial waiver of Commission Rule 103-331 approved by the Commission for Duke in Commission Order Nos. 2004-417 and 2005-600 should be continued and extended to all investor-owned electrical utilities operating in South Carolina.
2. In conjunction with the continuance and expansion of the partial waiver of Commission Rule 103-331, a partial waiver of Commission Rule 103-336 is also necessary.
3. A partial waiver of Rule 103-331 will allow Duke, PEC, and SCE&G more freedom to negotiate payment solutions with a non-residential customer or a non-residential customer's parent company that may be experiencing financial difficulties but has not yet defaulted or caused a default on payment obligations to the electrical utility.
4. Requiring Duke, PEC, and SCE&G to wait for a customer to default on a payment places them at a disadvantage in relation to the customer's other creditors and burdens other classes of customers by increasing the balance of uncollectible accounts.
5. That a partial waiver of Rule 103-336 is also consistent with the partial waiver of Rule 103-331 in that a customer or parent company's financial difficulty or bankruptcy may be imminent even though it continues to make billed payments in a timely manner.

6. That Duke, PEC and SCE&G may use different credit sources and evaluation techniques to perform a risk analysis on a customer as long as their respective practices are generally consistent with one another.

7. That Duke, PEC and SCE&G will provide ORS with a copy of their respective internal credit risk rating criteria upon request by ORS.

Duke witness Yarbrough testified that Commission Rule 103-331 (3) allows electrical utilities to require an existing customer to post a deposit or other form of security to guarantee payment of bills for service if the customer has had two consecutive 30-day arrears or more than two non-consecutive 30-day arrears in the past 24 months. She then explained that Commission Rule 103-336 provides that deposits shall be refunded completely with interest after two years unless the customer has had two consecutive 30-day arrears, or more than two non-consecutive 30-day arrears, in the past 24 months.

Witness Yarbrough and ORS witness Watts stated that in Order No. 2004-417 the Commission approved on an experimental basis in Docket No. 2004-169-E a request for a partial waiver of Rule 103-331 similar to the one now sought by PEC. As required by Order No. 2004-417, Duke filed a report of its experience with the waiver on September 27, 2005. In 2005 Duke asked that the partial waiver of Rule 103-331 be continued, and the Commission approved the partial rule waiver on a non-experimental basis in Order No. 2005-600.

Duke's witness Yarbrough explained that Duke requested the waiver because in the four years prior to requesting the partial waiver, it had experienced a significant increase in

the volume of accounts written off as uncollectible. Many of these uncollectible accounts came from non-residential customers with large accounts or large numbers of accounts, and the lack of available guarantee requirements for these established customers under Rule 103-331 was a significant contributor to write-offs in the non-residential classes. She stated that, under the existing rules, customers paying within terms but having financial difficulty can be indebted for two months' service without the utility having the ability to secure the account or discontinue service.

According to witness Yarbrough, Duke's experience indicates that although the customer may be paying its electric bill on a regular basis because it needs electricity on a day-to-day basis, its financial condition with other customers or suppliers may be rapidly deteriorating and bankruptcy may be imminent. Unlike other customers or suppliers, no charges for electric service are made until after the electricity already has been used, and the customer continues to use electricity until or after that bill becomes past due. Duke believed, at a minimum, that the creditworthiness criteria under Rule 103-331 should better match payment provisions in its tariffs and other rules. Specifically, the term "30-day arrears" as used in Rule 103-331 does not match the provisions of Duke's non-residential tariffs, which provide that bills are past due after 15 days, nor Rule 103-339, which allows late payment charges to be assessed after 25 days. As a result, according to the witness, customers currently do not have sufficient incentive to pay soon enough after billing to mitigate the credit risk.

The Duke, PEC and SCE&G witnesses each described in their testimonies the policies and procedures they use to evaluate the creditworthiness of their non-residential

customers. They explained the challenges they face attempting to manage their uncollectible accounts in a prudent manner when they are prohibited from obtaining any type of security from a non-residential customer that is experiencing financial difficulties, potentially resulting in bankruptcy, but is paying its bill prior to the past due date. PEC and SCE&G testified that they have experienced losses when customers that were paying their bills consistent with the Commission's rules filed for bankruptcy leaving large unpaid electrical utility debts.

Duke witness Yarbrough testified that the waiver of Rule 103-331 has helped Duke avoid such write-offs. She stated that the waiver has been extremely successful, and the results show that they have achieved the right balance between minimizing the hardship of a security deposit request on customers while minimizing the burden on the general body of ratepayers from uncollectible accounts.

PEC and Duke observed that the North Carolina Utilities Commission rules allow them to require customers to re-establish their credit if the conditions on which the customer's credit was originally established "have materially changed." Duke witness Yarbrough testified that the rule waiver in South Carolina has allowed it to review and treat customer accounts in South Carolina and North Carolina the same. This is especially important for customers that have accounts in both states. Some of the same customers whose accounts were secured in South Carolina also were secured in North Carolina and losses were prevented. PEC witness McCallister agreed with witness Yarbrough that allowing consistency between the utilities' practices in North and South Carolina is essential in managing their credit risks.

SCE&G witness Brown testified that, if a partial waiver of Commission Rule 103-331 is allowed, then Commission Rule 103-336 should also be partially waived. He observed that under Commission Rule 103-336, a utility is required to refund a deposit obtained when service was established after two years unless the customer has had two consecutive thirty day arrears, or more than two non-consecutive thirty day arrears in the past twenty four months, even if the customer's financial situation has significantly deteriorated since the establishment of service. This requirement creates the same challenges for the utilities in managing their uncollectible risk as presented by Commission Rule 103-331. Therefore, he concluded that it too should be partially waived. The Duke and PEC witnesses also explained in their testimony that a partial waiver of Rule 103-336 is in the public interest.

All of the utility witnesses testified that the granting of the rule waivers in question will benefit their general body of customers. By reducing uncollectible accounts, the utilities reduce their revenue requirements which results in lower rates for their customers.

ORS witness Watts testified that Duke has been very successful in applying its creditworthiness criteria and procedures. He explained that Duke attempts to work with the customer on security options that do not involve the payment of a two-month cash deposit such as an accelerated payment plan, surety bond, bank letters of credit or some combination of these. Under this procedure Duke has mitigated the risk while minimizing the impact to the customer as well as the potential burden on the general body of ratepayers from uncollectible accounts.. Witness Watts stated that Duke reports a total of 41 accounts with a monthly revenue exposure of \$10.8 million met the criteria for review during 2007

and 2008, and only 5 of these were determined to require a form of security. Application of the procedures in these cases assisted in the mitigation of losses that would have resulted when 4 of these 5 accounts went into bankruptcy. Also for this calendar year through June 2009, Watts further cited Duke reports that it has been able to mitigate losses of approximately \$900,000 on two (2) customer accounts that went into bankruptcy due to the use of these approved guidelines in conjunction with the partial waiver.

Therefore, Watts testified that through use of the partial waiver of Rule 103-331 and application of the criteria for review of customers' creditworthiness, Duke has been able to avoid losses and subsequent write-offs to uncollectible accounts. In addition, Watts testified the ability to use these procedures has allowed Duke to treat customer accounts in North and South Carolina in the same manner. Witness Watts then concluded that this uniformity can be helpful to utilities when working with companies that have accounts in both jurisdictions.

Witness Watts also observed that the proposed rule waivers will provide similar benefits to PEC and SCE&G. He noted that the witness testimony for both PEC and SCE&G included examples and data reflecting write-offs that could possibly have been mitigated through application of the Rule 103-331 partial waiver along with corresponding credit risk assessment procedures. In addition he has confirmed similar circumstances and concerns through discussions with Lockhart.

Finally, ORS witness Watts explained that any customer who feels aggrieved by implementation of the waiver of these Rules and concomitant use of risk analysis procedures will continue to have the option of bringing any concerns to the attention of the

ORS Consumer Services Department as well as the Public Service Commission through the complaint process. He noted that in situations where the utilities determine it is necessary to seek security of payment there are many options other than the maximum two-month deposit requirement. The ORS will be privy to filings or complaints made concerning these programs and will review and analyze them for compliance with approved guidelines and for uniformity as ORS does in the normal course of its duties. Witness Watts observed that since the objective of the electrical utilities is to assist customers in remaining a viable entity, it is reasonable to expect them to invoke the use of these criteria only when the risk analysis indicates the customer's financial condition has deteriorated to the point that payment security is required.

In conclusion, Witness Watts found that the empirical data from the past two-and-one-half years of implementation by Duke indicates the success of the partial waiver of Rule 103-331 to mitigate and reduce uncollectible accounts in a manner fair and appropriate to all parties. He explained that the additional request for a partial waiver of Rule 103-336 would allow the utilities to retain a deposit currently in its possession if the risk analysis shows the continued need for payment security and that the ORS believes the request is reasonable and in the public interest.

Although not a party to the Stipulation, Lockhart Power Company indicated in its e-mail of October 7, 2009 its desire to be bound by the same partial waivers of the regulations as described for the other investor-owned electrical utilities.

The Commission has considered the testimony of the witnesses and the other evidence of record in this proceeding, including the Stipulation. Based on this factual

record, the Commission agrees that the requested partial waiver of Commission Rules 103-331 and 103-336 as applied to non-residential customers is in the public interest. Providing the State's utilities with the tools to secure customer accounts when a customer is in financial distress benefits the utilities' general body of ratepayers. It is not in the utilities' best interest to place unnecessary burdens on their customers that may cause them to reduce or terminate their operations and thereby reduce their consumption of electricity; therefore, the Commission believes the utilities will be judicious in their use of this waiver. The ORS will review the utilities' practices as necessary and ensure that waiver of these rules will inure to the benefit of their customers.

We do observe, however, that a reading of the two regulations as they exist would not reveal the non-residential partial waivers granted herein. We believe that it is generally preferable and in the public interest that such major waivers as granted ultimately be adopted as modifications to the actual regulations themselves, so that the public can be fully informed. Accordingly, we hold that the partial waivers granted by this Order shall be temporary, existing only until such time as the Commission can hold a rulemaking proceeding, and new regulations can be placed into effect by the General Assembly.

NOW THEREFORE, based upon the foregoing, IT IS HEREBY DECLARED
AND ORDERED THAT:

1. PEC's motion for partial waiver of Commission Rules 103-331 and 103-336 is granted with respect to all investor-owned electrical utilities, consistent with the Stipulation attached hereto as Order Exhibit No. 1, which was accepted into the record

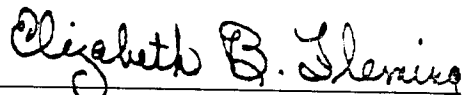
without objection at the hearing. The Stipulation constitutes a reasonable resolution to this proceeding and is hereby adopted as such.

2. The investor-owned electrical utilities shall provide copies of their internal credit risk rating criteria to the Office of Regulatory Staff and the Commission within thirty (30) days of the date of this Order.

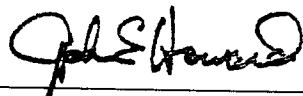
3. The partial waivers as granted herein shall be temporary until such time as a rulemaking proceeding concerning Commission Regulations 103-331 and 103-336 can be held, and new regulations placed into effect by the General Assembly.

4. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Elizabeth B. Fleming, Chairman

ATTEST:


John E. Howard, Vice Chairman

(SEAL)

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BEFORE

THE PUBLIC SERVICE COMMISSION OF

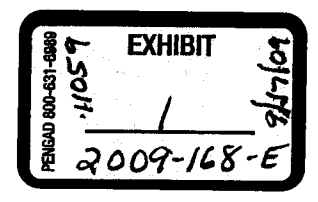
SEP 10 2009

SOUTH CAROLINA

PSC SC
MAIL / DMS

DOCKET NO. 2009-168-E

September 10, 2009



Progress Energy Carolinas, Incorporated's)
Incorporated's Motion for Partial Waiver)
Of Commission Rules 103-331 and 103-336)

STIPULATION

This Stipulation ("Stipulation" or "Agreement") is made by and among the South Carolina Office of Regulatory Staff ("ORS"); Progress Energy Carolinas, Inc. ("Progress"); Duke Energy Carolinas, LLC ("Duke"); and South Carolina Electric & Gas Company ("SCE&G") (collectively referred to as the "Parties" or sometimes individually as a "Party").

WHEREAS, the Public Service Commission of South Carolina ("Commission") directed Commission Staff to schedule a generic hearing after recognizing the need for uniformity among the electric utilities regarding waivers of 26 S.C. Code Ann. Regs. 103-331 and 103-336 (Supp. 2008);

WHEREAS, on June 5, 2009, the Commission set a hearing for September 17, 2009 at 10:30 a.m. and established August 20, 2009 as the prefiled direct testimony date for all Parties and September 3, 2009 as the date for rebuttal testimony;

WHEREAS, Commission Rule 103-331(A)(1) states an electrical utility may require an existing customer to post a deposit or other form of security to guarantee payment if the customer has had two consecutive 30-day arrears or more than two non-consecutive 30-day arrears in the past 24 months;

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Order Exhibit No. 1
Docket No. 2009-168-E
Order No. 2009-770
November 4, 2009

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WHEREAS, Commission Rule 103-336 states deposits shall be refunded completely with interest after two years unless the customer has had two consecutive 30-day arrears or more than two non-consecutive 30-day arrears in the past 24 months;

WHEREAS, the Commission provided notice to the public of the generic hearing;

WHEREAS, the Parties listed above submitted testimony in this docket on August 20, 2009;

WHEREAS, no other testimony was filed by any other party;

WHEREAS, the Parties to this Stipulation are parties of record in the above-captioned docket;

WHEREAS, Progress, Duke, and SCE&G ("the Companies") have requested to present their witnesses as a panel;

WHEREAS, the Parties have engaged in discussions to determine if a Stipulation would be in their best interest;

WHEREAS, following these discussions the Parties have each determined that their interest and the public interest would be best served by agreeing to matters in the above-captioned case under the terms and conditions set forth below:

1. The Parties agree to stipulate into the record before the Commission the direct testimony and exhibits of the following four (4) witnesses without objection, change, amendment or cross-examination with the exception of changes comparable to those which would be presented via an errata sheet or through a witness noting a correction.

- (i) ORS witness:
Randy Watts
- (ii) Progress witness:
Elaine McCallister
- (iii) Duke witness:
Barbara G. Yarbrough

(iv) SCE&G witness:
Dan S. Brown

2. The Parties agree that the partial waiver of Commission Rule 103-331 approved by the Commission for Duke in Commission Order Nos. 2004-417 and 2005-600 should be continued and extended to all investor-owned electrical utilities operating in South Carolina.

3. The Parties further agree that, in conjunction with the continuance and expansion of the partial waiver of Commission Rule 103-331, a waiver of Commission Rule 103-336 is also necessary.

4. The Parties agree that a partial waiver of Rule 103-331 will allow the Companies more freedom to negotiate payment solutions with a non-residential customer or a non-residential customer's parent company who may be experiencing financial difficulties but has not yet defaulted or caused a default on payment obligations to the electric utility.

5. The Parties agree that requiring the Companies to wait for a customer to default on a payment places the Companies at a disadvantage in relation to the customer's other creditors and burdens other classes of customers by increasing the balance of uncollectible accounts.

6. The Parties agree that a waiver of Rule 103-336 is also consistent with the partial waiver of Rule 103-331 in that a customer or parent company's financial difficulty or bankruptcy may be imminent even though it continues to make billed payments in a timely manner.

7. The Parties agree that the Companies may use different credit sources and evaluation techniques to perform a risk analysis on a customer as long as their respective practices are generally consistent with one another.

8. The Parties agree that the Companies will provide ORS with a copy of their respective internal credit risk rating criteria upon request by ORS.

9. Accordingly, the Parties agree that a partial waiver of Rule 103-331 and a waiver of 103-336 are reasonable, prudent, and in the public interest and should be extended to all investor-owned electrical utilities in South Carolina.

10. The Parties agree this Stipulation is reasonable, in the public interest and in accordance with law and regulatory policy.

11. ORS is charged with the duty to represent the public interest of South Carolina pursuant to S.C. Code §58-4-10(B) (Supp. 2008). S.C. Code §58-4-10(B)(1) through (3) reads in part as follows:

“...‘public interest’ means a balancing of the following:

- (1) Concerns of the using and consuming public with respect to public utility services, regardless of the class of customer;
- (2) Economic development and job attraction and retention in South Carolina; and
- (3) Preservation of the financial integrity of the State’s public utilities and continued investment in and maintenance of utility facilities so as to provide reliable and high quality utility services.”

12. The Parties agree to cooperate in good faith with one another in recommending to the Commission that this Stipulation be accepted and approved by the Commission as a fair, reasonable and full resolution in the above-captioned proceeding. The Parties agree to use reasonable efforts to defend and support any Commission order issued approving this Stipulation and the terms and conditions contained herein.

13. This written Stipulation contains the complete agreement of the Parties. There are no other terms and conditions to which the Parties have agreed. The Parties agree that this Stipulation will not constrain, inhibit or impair their arguments or positions held in future

proceedings, nor will the Stipulation or any of the matters agreed to in it be used as evidence or precedent in any future proceeding. If the Commission declines to approve the Stipulation in its entirety, then any Party desiring to do so may withdraw from the Stipulation without penalty.

14. This Stipulation shall be interpreted according to South Carolina law. The above terms and conditions fully represent the agreement of the Parties hereto. Therefore, each Party acknowledges its consent and agreement to this Stipulation by affixing his or her signature or authorizing its counsel to affix his or her signature to this document where indicated below. Counsel's signature represents his or her representation that his or her client has authorized the execution of the agreement. Facsimile signatures and e-mail signatures shall be as effective as original signatures to bind any party. This document may be signed in counterparts, with the various signature pages combined with the body of the document constituting an original and provable copy of this Stipulation.

WE AGREE:

Representing and binding the South Carolina Office of Regulatory Staff

Shannon Bowyer Hudson

Shannon Bowyer Hudson, Esquire

Shealy Boland Reibold, Esquire

South Carolina Office of Regulatory Staff

1401 Main Street, Suite 900

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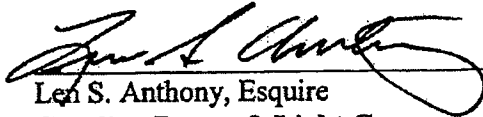
Fax: (803) 737-0895

Email: shudson@regstaff.sc.gov

sreibol@regstaff.sc.gov

WE AGREE:

Representing and binding Carolina Power & Light Company, d/b/a Progress Energy Carolinas, Inc.

A handwritten signature in black ink, appearing to read "Len S. Anthony", is written over a horizontal line.

Len S. Anthony, Esquire

Carolina Power & Light Company, d/b/a Progress Energy Carolinas, Inc.

P.O. Box 1551

Raleigh, NC 27602

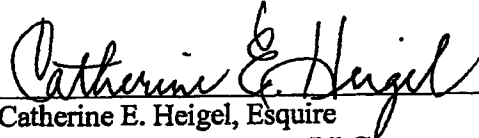
Phone: (919)546-6367

Fax: (919)546-2694

Email: len.s.anthony@pgnmail.com

WE AGREE:

Representing and binding Duke Energy Carolinas, LLC

A handwritten signature in cursive script, reading "Catherine E. Heigel", is written over a horizontal line.

Catherine E. Heigel, Esquire

Duke Energy Carolinas, LLC

526 S. Church Street, EC03T

Charlotte, NC 28202


Phone: (704) 382-8123

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Email: ceheigel@duke-energy.com

WE AGREE:

Representing and binding South Carolina Electric & Gas Company



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